

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DEBORAH NORRIS and MICHAEL NORRIS, h/w	:	CIVIL ACTION
	:	
v.	:	
	:	
CHAMPION CONTAINER CORPORATION	:	
and	:	NO. 05-cv-1766
FRANCIS CONWAY	:	

MEMORANDUM

Baylson, J.

May 24, 2005

I. Introduction

Presently before this Court in this suit for damages, arising out of an automobile accident in which jurisdiction is based on diversity of citizenship, is a Motion to Dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(2) filed by Defendant Francis Conway, and a Motion for Discretionary Transfer of Venue, pursuant to 28 U.S.C. §1404(a), filed by Defendants Francis Conway and Champion Container Corporation. The Motion to Dismiss is unopposed by the Plaintiffs and will be granted. For the reasons stated below, the Defendants' Motion for Discretionary Transfer of Venue will be denied.

II. Background

On May 30, 2003, a motor vehicle accident occurred in Upper Freehold Township, Monmouth County, New Jersey. According to a New Jersey State Police report, Defendant Conway was driving a truck, which made an illegal lane change into the left lane, which was occupied by the Plaintiff's vehicle. In an attempt to avoid a collision, Plaintiff Deborah Norris swerved left toward the center median and then swerved right and collided with the curb of an

exit ramp. A witness statement, submitted by Jennifer Perusi, a resident of Mt. Laurel, New Jersey, confirmed this sequence of events. Plaintiff Deborah Norris claims in Count I of her Complaint that she sustained severe injuries to her head, neck, shoulders, back, abdomen, and extremities, and suffered shock and injury to her nerves and nervous system. Plaintiff further states that she is currently receiving treatment in Pennsylvania hospitals and is unable to continue her employment. In Count II of the Complaint, Plaintiff Michael Norris claims extensive damage to his motor vehicle. In addition, he charges that as a result of Defendants' negligence he has been deprived of the assistance and society of his wife. Each Plaintiff seeks an award in excess of fifty thousand dollars, plus interest and costs.

Defendant Francis Conway, who was charged with careless driving, is an employee of Defendant Champion Container Corporation. At the time of the accident, he was transporting a load of empty bottles between two company warehouses, both located in New Jersey. He is a resident of Wilmington, Delaware, and works in Swedesboro, New Jersey. Defendant Champion Container Corporation is located in Avenel, New Jersey, and is a citizen of New Jersey. The Plaintiffs allege that Defendant Champion Container regularly engages in business in the Commonwealth of Pennsylvania.

III. Discussion

Plaintiffs do not oppose the Motion of the individual Defendant Francis Conway to Dismiss the Complaint as to him, apparently recognizing that he is not subject to jurisdiction in Pennsylvania, and thus not subject to being sued in this Court. Although Plaintiffs could have jurisdiction over Conway if they agreed to the transfer of this case to New Jersey, Plaintiffs contest the propriety of such transfer, thus apparently indicating a preference to proceed in this

jurisdiction against Defendant Champion alone.

Defendant Champion argues that this case should be transferred to the United States District Court for the District of New Jersey pursuant to 28 U.S.C. §1404(a), which states that “for the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.”

In reviewing the papers filed by Champion in support of transfer, the Court finds that Champion has not satisfied its burden of showing that transfer is appropriate. It is clear that the party moving for transfer under § 1404(a) has the burden of showing that transfer is proper. In re United States, 273 F.3d 380, 388 (3d Cir. 2001) (stating that in § 1404(a) cases “the burden is on the moving party to establish that a balancing of proper interests weigh in favor of the transfer”) (quoting Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970)). In this case, Champion does not reveal with any particularity what witnesses it has within its employ who would be inconvenienced by traveling from New Jersey to Center City Philadelphia for purposes of a trial in this case. Obviously, the proximity of New Jersey to Philadelphia would make it difficult to demonstrate a hardship for any party moving for transfer from the District of New Jersey to the Eastern District of Pennsylvania. Although it is true that the facts of this case took place in New Jersey, that it not determinative. The Plaintiffs’ choice of forum, particularly in a case charging personal injury, is entitled to significant weight and the evidence presented by Champion in support of its Motion is insufficient to overcome that preference. See Jumara v. State Farm Ins. Co., 55 F.3d 873, 880 (3d Cir. 1995) (noting that courts normally defer to a plaintiff's choice of forum).

An appropriate Order follows.

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	:	NO. 05-cv-1766
CHAMPION CONTAINER CORPORATION	:	
and	:	
FRANCIS CONWAY	:	

ORDER

AND NOW, this 24th day of May, 2005, based on the foregoing Memorandum and upon consideration of the briefs, it is hereby ORDERED that Defendant Francis Conway's Motion to Dismiss the Complaint for Lack of Personal Jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) (Doc. No. 3) be GRANTED as unopposed. Defendant Conway is hereby terminated as a party to this action.

It is further ORDERED that Defendants' Motion for Discretionary Transfer of Venue pursuant to 28 U.S.C. § 1404(a) (Doc. No. 4) is DENIED.

BY THE COURT:

s/Michael M. Baylson_____

Michael M. Baylson, U.S.D.J.